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Supreme Court, U.S.
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CLERK

NO. 02-488

In The

SUPREME COURT OF THE UNITED STATES

David K. Kalan pro sec, Petitioner

v.

City of St. Francis, Respondents

On Petition for Writ of Certiorari
United States Court of Appeals 7th Cir and
United States District Court Eastern District of Wisconsin

RESPONSE TO BRIEF IN OPPOSITION FOR WRIT OF CERTIORARI

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TABLE OF AUTHORITIES

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RESPONDENTS STATE THAT I PROVIDED NO BASIS FOR RULE 60 MOTION.

Review of Brief in Opposition Page 3 "Judge Burns conducted a settlement conference with the parties. The conference resulted in a stipulated judgment that the Petitioner's appeal in Case No.91-CV-00469 and the City's action in Case No. 91-CV-007608 would be dismissed subject to specific conditions."

First and foremost, Jury Demand Case No. 1900469 was assigned to Criminal Court Judge Tesmer, Judge Burns has no jurisdiction. The Stipulation is a nullity, it has no legal effect on dismissing Jury trial 1900469. WI stats 802.06 govern motions for dismissal, WI stat 805.05 govern consolidation of separate trials, and WI stat 805.01 Jury Trial of Right. These statues are Wisconsin law and cannot be waive by stipulation. See Brooklyn Savings Bank v O'Neal 324 U.S. 697 704 (1945) "Every state official, high and low is bound by the 14th Amendment including official of the executive and judicial." 924 16B Am Jur 2d 522.

The improper dismissal of my jury right as a result of the stipulation is unlawful, and provides the basis for my Rule 60 Motion. The District Court and the Court of Appeals for the 7th Circuit cite Res judicata to an illegal stipulation. This Supreme Court must determine the stipulation a nullity, having no legal effect on dismissing my Jury Right, Judge Tesmer Case 1900469. New York v Hill No 98-1299 certain fundamental rights can not be waived by stipulation. Judge Burns has no jurisdiction to stipulate change in WI Stats. Art. 7,2s 13. Jurisdiction-In-General "The term "jurisdiction" includes not only jurisdiction over persons and subject matter, but also

power to render a particular form of judgment." Reburg v Lang (1942) 1 N.W. 2d 759, 239 Wis 381.

This court has the independent duty to determine whether jurisdiction exists in every case. See United States v Tittjung 235 F. 3d 330,335 (7th Cir 2000), denied, 121 S. Ct. 2554 (2001).

RESPONDENTS STATE TOO MUCH TIME AS PASSED TO BRING RULE 60 MOTION

New York v Hill was decided January 11, 2000; I had no compelling case to bring Rule 60 Motion till I discovered this recent Supreme Court ruling. Rule 60 Motion is not subject to enumerated time limit. (6) Any other reason justifying relied from operation of the judgment.

RESPONDENTS STATE THE DENIAL OF REQUEST FOR AN INJUNCTION IS SUPPORT BY ALL APPLICABLE LAW.

The public interest is not protected if a City Attorney can openly, admittedly violate jury procedures by stipulation, and not have the Federal Court address the violation of WI Statutes. Brooklyn Savings Bank v O'Neal 324 U.S. 697, 704 (1945)

CONCLUSION

Respondents state that I did not appeal a pro sec motion to reopen the judgment entered in Case No 91-CV-007608, which was denied at a February 1, 1993 hearing.pg3

Clearly Respondents are misleading this court. Court of Appeal District 1 September 13, 1994, No 93-1671 reversed Judge Burns and Judge Burns reopen under section 806.07 (1)(h) "Extraordinary circumstances" stating (Transcript Feb. 6, 1996 pg3 line 9-12) "back in 1991, was not really the product of his informed consent."

Judge Burns also confirmed that City of St. Francis violated procedures in bringing an action for injunctive relief in circuit court. (Transcript Feb. 12, 1996, pg 11 line 5-7) "I know why you brought an action in circuit court because you wanted to get some injunctive relief here but never in all my time on the bench—Because the procedure is so clumsy you have to follow a criminal procedure of the court finding probable cause or you can have the court summon the defendant before the Court All those procedures you don't use that: Do you, Are you aware of that procedure? Mr. Staats: Yes your Honor. The Court: you don't use it thought? You didn't use it here? Mr. Staats: No, I didn't your Honor: The Court: That's a fatal flaw."

"Speaking by Mr. Justice Bradley, we have declared in Boyed v United States 116 U.S. 616, 636 that it "is the duty of the courts to be watchful for the constitutional rights of the citizen."

This Supreme Court must be watchful for my constitutional First Amendment right to get relief, justice and redress, including financial relief. I have a 1st Amendment right to be free of this outstanding $37,375.00 judgment and to correct my credit history.

The names and address of those served are as follows

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Executed on November 5, 2002

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